



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0086]

Identification of Interstate Motor Vehicles: City of Chicago, IL Registration

Emblem Requirement; Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Re-opening of comment period.

SUMMARY: In January 2012, Allerton Charter Coach, Inc. (Allerton) submitted a petition requesting that FMCSA determine that the Chicago Ground Transportation Tax registration emblem display requirement is preempted by Federal law. In March 2012, FMCSA published a notice of Allerton's petition for determination and requested comments. The Agency received five comments in response to the March 2012 notice. Due to the passage of time, and to ensure that all interested parties have an opportunity to provide comments or new information, the Agency re-opens the comment period for 30 days.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2012-0086 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: C. Kim McCarthy, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; by email at carolyn.mccarthy@dot.gov, or by telephone at (202) 366-9307. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this Notice (FMCSA-2012-0086), indicate the specific section of the document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a

mailing address, an email address, or a telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2012-0086, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA seeks comment on whether the emblem display requirement described below is preempted or whether it qualifies for an exception. If you previously submitted comments in response to the Agency’s March 2012 Notice, it is not necessary to resubmit your comments, unless you have new information to provide. The Agency will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2012-0086, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey

Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

DOT solicits comments from the public to better inform its decisionmaking processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

On January 20, 2012, Allerton submitted a petition for determination that the Chicago Ground Transportation Tax (the Tax) registration emblem display requirement, which applies to interstate motor passenger carriers within FMCSA's jurisdiction, is preempted by 49 U.S.C. 14506(a). Section 14506(a) prohibits States from requiring interstate motor carriers to display in or on specified commercial motor vehicles (CMVs) any form of identification other than forms required by the Secretary of Transportation, with certain exceptions. On March 23, 2012, FMCSA published a Notice of Allerton's petition, requesting comment on whether the registration emblem display requirement is preempted by 49 U.S.C. 14506(a) or whether any exception set forth in section 14506(b) applies (77 FR 17105). On May 18, 2012, the City of Chicago (Chicago) submitted its response to Allerton's petition. Chicago opposed the petition, arguing that Allerton did not demonstrate a "live dispute" regarding the emblem display requirement and, further, that the emblem display requirement falls within the exceptions identified in 49 U.S.C. 14506(b)(2) and (3). The statutory exceptions cited by Chicago are, respectively, credentials required under the International Fuel Tax Agreement or applicable State law

(49 U.S.C. 14506(b)(2)) and a State law regarding motor vehicle license plates “or other displays that the Secretary determines are appropriate” (49 U.S.C. 14506(b)(3)).

Allerton’s petition and Chicago’s response are available in the docket for this Notice.

The Tax requires providers of passenger ground transportation within the City of Chicago to register their vehicles and pay a graduated fee that varies according to the seating capacity of each vehicle registered (Chicago Mun. Code ch. 3-46). The Tax applies to all for-hire vehicles used to pick up, drop off, or both pick up and drop off passengers within the city (Chicago Mun. Code § 3-46-020(H)). The Tax applies regardless of whether the vehicle is registered or titled within the State of Illinois. *Id.*

Vehicles subject to the Tax must display an emblem on the windshield as evidence of registration and payment (Chicago Mun. Code § 3-46-073(A)). Vehicles failing to display the emblem are prohibited from operating within the city and are subject to seizure and impoundment at the vehicle owner’s expense, as well as an administrative penalty of \$500. *Id.*

As noted above, Federal law, codified at 49 U.S.C. 14506(a), prohibits States from requiring interstate motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation. However, section 14506(b) states that a State may continue to require display of credentials required (1) under the International Registration Plan under section 31704; (2) under the International Fuel Tax Agreement (IFTA) or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through IFTA; (3) under a State law regarding requiring motor vehicle license plates or other displays that the Secretary determines are appropriate; (4) in connection with Federal requirements for hazardous

materials transportation under section 5103; or (5) in connection with Federal vehicle inspection standards under section 31136.

In accordance with a previous decision, FMCSA interprets all the exceptions in section 14506(b) to apply to political subdivisions of States, including municipalities. *See Identification of Interstate Motor Vehicles: New York City, Cook County, and New Jersey Identification Requirements; Petition for Determination*, 75 FR 64779 (Oct. 20, 2010). Authority granted to the Secretary under section 14506 has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(7).

On July 2, 2019, the American Bus Association (ABA) requested that the Agency re-publish the petition to allow an opportunity for any additional public comments on the matter, and that FMCSA issue a determination as soon as practicable thereafter. The ABA also noted that, although Allerton recently ceased operations, a number of ABA members currently operating in Chicago remain subject to the decal requirement and the associated penalties for non-compliance¹.

III. Comments Requested

As explained above, considering the passage of time since the publication of the Notice, FMCSA is re-opening the comment period on Allerton's petition. The Agency specifically seeks comment on whether the City of Chicago's registration emblem display requirement is preempted by 49 U.S.C. 14506(a) or whether it qualifies under any of the five exceptions set forth in 49 U.S.C. 14506(b) and listed above. As stated in the March 23, 2012, Notice, FMCSA believes that section 14506(b)(3) is the only exception that could potentially apply to the Tax and therefore seeks comment

¹The July 2, 2019 letter from ABA to FMCSA Administrator Ray Martinez is available in Docket No. FMCSA-2012-0086, accessible through <https://www.regulations.gov>.

specifically on whether the Agency should approve the registration emblem display requirement under that exception. The Agency requests that comments be limited to these issues, and encourages the submission of data or legal authorities supporting the commenter's position. Parties who commented in response to the Agency's March 23, 2012, Notice and have no further or updated information to add need not resubmit their comments. FMCSA may issue a determination on the petition at any time after the close of the comment period.

Issued on: August 27, 2019.

Raymond P. Martinez,
Administrator

[FR Doc. 2019-18983 Filed: 8/30/2019 8:45 am; Publication Date: 9/3/2019]